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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GUSSIE GELB and VINCENT
D. MILLER, INC.

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY

Respondent.

PCHB 994

RULING ON MOTION AND
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Respondent's motion to dismiss is denied.

This matter, the appeal of a \$50.00 civil penalty for an alleged opacity violation of Respondent's Section 9.03 of Regulation I, came on for hearing before the Pollution Control Hearings Board (Chris Smith, Chairman and Art Brown, Member) convened at the Seattle facility of the State Board of Industrial Insurance Appeals on June 24, 1976. William A. Harrison, Hearing Examiner, presided. Respondent elected a formal hearing.

Appellants, Gussie Gelb and Vincent D. Miller, Inc., appeared by Ann C. Mattice, an employee of Vincent D. Miller, Inc.

Respondent appeared by and through its attorney, Keith D. McGoffin.
Olympia Court Reporter, Juana Tingdale, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.
From testimony heard and exhibits examined the Pollution Control
Hearings Board makes these

FINDINGS OF FACT

I.

Pursuant to RCW 43.21B.260 Respondent has filed its
Regulation I with the Pollution Control Hearings Board and official
notice thereof is hereby taken. Section 9.03(b) of said Regulation I
is as follows:

"After July 1, 1975, it shall be unlawful
for any person to cause or allow the emission of any
air contaminant for a period or periods aggregating
more than three (3) minutes in any one hour, which is;
(1) Darker in shade than that designated as No. 1
(20% density) on the Ringelmann Chart, as published by
the United States Bureau of Mines; or
(2) Of such opacity as to obscure an observer's view
to a degree equal to or greater than does smoke
described in subsection 9.03(b)(1)"

II.

Mrs. Gussie Gelb is the owner of the Samuel Gelb Bldg.
(4534 University Way N.E., Seattle, Washington), and was so at all times
relevant to this appeal. Vincent D. Miller, Inc., was the manager
of that same building during all times relevant to this appeal.
The relationship between Mrs. Gelb and Vincent D. Miller, Inc. is
set out in a written contract (A-1).

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1 III.

2 In the contract (A-1) Vincent D. Miller is referred to as the
3 "agent" of Mrs. Gelb. The preamble of the contract further describes
4 their relation:

5 Agent is hereby designated as the exclusive agent and
6 representative of Owner for the purpose of managing
for Owner's account [the property here involved].

7 Paragraph four (4) of the contract (A-1) states the following:

8 (4) Agent shall do everything reasonably necessary for
9 the proper management of the property, including
periodic inspections, the supervision of maintenance in
10 arranging for such improvements, alterations and repairs
as may be required of Owner. No improvements, alter-
11 ations or repair work costing more than \$200.00 shall be
made by Agent without Owner's prior authorization.
12 However, in case of emergency which requires immediate
repairs or alterations, if Owner is not readily avail-
13 able for consultation, Agent shall use its own
discretion regarding same.

14 Consistent with the above-quoted contract language, we find that
15 Mrs. Gelb has not actively participated in the physical operation of
16 the Samuel Gelb Bldg., nor was she present there the day of this alleged
17 violation; rather, the building was physically operated by and was under
18 the control of Vincent D. Miller, Inc. at all times relevant to this
19 appeal.

20 IV.

21 On February 23, 1976 air contaminants were emitted from the
22 boiler stack of the Samuel Gelb Bldg. Such emission was of nine (9)
23 minutes duration and varied between Nos. 4 and 5 on the Ringelmann Chart.

24 V.

25 Notice and Order of Civil Penalty No. 2714 was served on
26 both Mrs. Gelb and Vincent D. Miller, Inc.

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FINDINGS OF FACT, CONCLUSIONS
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1 VI.

2 Although the facts in this paragraph do not bear upon whether
3 a violation has occurred, we find that Vincent D. Miller, Inc. sought
4 service of the furnace promptly after receiving the Notice and Order of
5 Civil Penalty. We find further that violations of the kind alleged need
6 not occur if the heating plant of the Samuel Gelb Bldg. is maintained in
7 proper working order. The direction of drafts or winds and the location
8 of other buildings is entirely irrelevant under Section 9.03 of Regulation
9 1 which centers upon the initial release of contaminants into the ambient
10 air.

11 VII.

12 Any Conclusion of Law hereinafter recited which should be
13 deemed a Finding of Fact is hereby adopted as such.

14 CONCLUSIONS OF LAW

15 I.

16 Emissions from the Samuel Gelb Bldg. on February 23, 1976 have
17 violated Section 9.03 of Regulation 1.

18 II.

19 Section 9.03 of Regulation I does not provide that a building
20 owner, per se, is liable for violative emissions from a building. Rather
21 in the words of Section 9.03, "it shall be unlawful to cause or allow."
22 We find that Mrs. Gelb did not personally cause or allow the emission in
23 question. However, we conclude that Mrs. Gelb's relationship with
24 Vincent D. Miller, Inc. was that of a principal and agent and, as such,
25 vicarious liability can be imposed upon Mrs. Gelb for the actions or
26 omissions of Vincent D. Miller, Inc.

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III.

On February 23, 1976 Appellant Vincent D. Miller, Inc., an agent of Mrs. Gelb, caused or allowed the emission of air contaminants in violation of Section 9.03 of Regulation I for which a \$50.00 civil penalty was properly assessed under Section 3.29. Mrs. Gelb, as the principal, is also liable to Respondent Puget Sound Air Pollution Control Agency for the penalty imposed for the acts of her agent.

IV.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

ORDER

The violation and civil penalty imposed by Notice and Order of Civil Penalty No. 2714 are each hereby affirmed as to Gussie Gelb, and as to Vincent D. Miller, Inc.; except, that \$25.00 of the \$50.00 penalty is suspended provided that no further violations from this source occur within six months from the date of this Order.

DATED this 21st day of October, 1976.

POLLUTION CONTROL HEARINGS BOARD

Art Brown
ART BROWN, Chairman

Chris Smith
CHRIS SMITH, Member

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